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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/514,928	02/28/2000	Peter J. Wilk	W07-428	9269
7590 01/30/2007 R Neil Sudol Coleman Sudol Sapone, P.C. 714 Colorado Avenue Bridgeport, CT 06605-1601		•	EXAMINER JAWORSKI, FRANCIS J	
			ART UNIT	PAPER NUMBER
Bridgeport, Cr	00005-1001		3768	
SHORTENED STATUTOR	RY PERIOD OF RESPONSE	· MAIL DATE	DELIVER	Y MODE
3 MC	ONTHS	01/30/2007	PAPER	

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

	Application No.	Applicant(s)	
	09/514,928	WILK ET AL.	
Office Action Summary	Examiner	Art Unit	
	Jaworski Francis J.	3768	
The MAILING DATE of this communication app Period for Reply			
A SHORTENED STATUTORY PERIOD FOR REPLY WHICHEVER IS LONGER, FROM THE MAILING DA - Extensions of time may be available under the provisions of 37 CFR 1.13 after SIX (6) MONTHS from the mailing date of this communication. - If NO period for reply is specified above, the maximum statutory period was period for reply within the set or extended period for reply will, by statute Any reply received by the Office later than three months after the mailing earned patent term adjustment. See 37 CFR 1.704(b).	ATE OF THIS COMMUNICATION 36(a). In no event, however, may a reply be tin will apply and will expire SIX (6) MONTHS from to cause the application to become ABANDONE	N. nely filed the mailing date of this communication. D (35 U.S.C. § 133).	
Status			
 Responsive to communication(s) filed on <u>08 New</u> This action is FINAL. 2b) This Since this application is in condition for allower closed in accordance with the practice under Exercise. 	action is non-final. nce except for formal matters, pro		
Disposition of Claims	n parie dadyle, 1000 c.b. 11, k	30 0.0. 210.	
 4) ☐ Claim(s) 31,33-35 and 47-49 is/are pending in 4a) Of the above claim(s) is/are withdraw 5) ☐ Claim(s) is/are allowed. 6) ☐ Claim(s) 31,33-35,47-49 is/are rejected. 7) ☐ Claim(s) is/are objected to. 8) ☐ Claim(s) are subject to restriction and/or 	vn from consideration.		
Application Papers			
9) The specification is objected to by the Examine 10) The drawing(s) filed on is/are: a) acce Applicant may not request that any objection to the Replacement drawing sheet(s) including the correct 11) The oath or declaration is objected to by the Ex	epted or b) objected to by the l drawing(s) be held in abeyance. Sec ion is required if the drawing(s) is ob	e 37 CFR 1.85(a). jected to. See 37 CFR 1.121(d).	
Priority under 35 U.S.C. § 119			
12) Acknowledgment is made of a claim for foreign a) All b) Some * c) None of: 1. Certified copies of the priority documents 2. Certified copies of the priority documents 3. Copies of the certified copies of the prior application from the International Bureau * See the attached detailed Office action for a list	s have been received. s have been received in Applicati ity documents have been receive I (PCT Rule 17.2(a)).	on No ed in this National Stage	
Attachment(s) Notice of References Cited (PTO-892) Notice of Draftsperson's Patent Drawing Review (PTO-948) Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date	4) Interview Summary Paper No(s)/Mail Da 5) Notice of Informal P 6) Other:	nte	

Application/Control Number: 09/514,928

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DETAILED ACTION

Double Patenting

The finality of the prior Office action has been WITHDRAWN pursuant to the discovery of a conflicting application by applicants on search update.

Claims 31, 33 – 35 and 47 - 49 of this application were found on intended processing for allowance to conflict with corresponding method claims of Application No. 10/663,084. 37 CFR 1.78(b) provides that when two or more applications filed by the same applicant contain conflicting claims, elimination of such claims from all but one application may be required in the absence of good and sufficient reason for their retention during pendency in more than one application. Applicant is required to either cancel the conflicting claims from all but one application or maintain a clear line of demarcation between the applications. See MPEP § 822.

Hence while applicants may have filed the latter '084 application pursuant to a restriction requirement by the Patent Office between apparatus and method set forth on December 10, 2002, the '084 filing retains method claim sets directed inter alia to practice of arrays mounted to flexible substrates and operating according to self-cohering algorithms or forming data gathering apertures and transmit/receive sets for obtaining a three-dimensional analog or models.

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140

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F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 31, 33 – 35 and 47 – 49 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims respectively of copending Application No. 10/663,084. Although the conflicting claims are not identical, they are not patentably distinct from each other because as noted above, this divisional application has been filed without inter alia a preliminary amendment canceling method claims having subject matter which in response to the December 10, 2002 restriction applicants elected to pursue in this case.

This is a <u>provisional</u> obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

This action is NOT made final however the case should be prepared for final action.

Any inquiry concerning this communication should be directed to Jaworski Francis J. at telephone number 571-272-4738.

FJJ:fjj 12/10/06

Francis J. Jaworski Primary Examiner